

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

ARON FREELAND, )  
Petitioner, )  
v. )  
SHELBY SEARLS, Superintendent<sup>1</sup>, )  
Respondent. )  
)

Civil Action No. 2:21-00574

**TRANSFER ORDER**

On October 25, 2021, Petitioner, acting *pro se*, initiated a *habeas* action with this Court pursuant 28 U.S.C. § 2254. (Document No. 1.) This matter is assigned to the Honorable Irene C. Berger, United States District Judge, and it is referred to the undersigned United States Magistrate Judge for initial screening and to make proposed findings and a recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). (Document No. 4.)

The undersigned notes that Petitioner is incarcerated at Huttonsville Correctional Center and challenges his State court conviction entered by the Circuit Court of Monongalia County, West Virginia. Title 28 U.S.C. § 2241(d) provides as follows:

Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district

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<sup>1</sup> Petitioner indicates that he is currently incarcerated at the Huttonsville Correctional Center (“HCC”). Shelby Searls is the Superintendent of the HCC. Accordingly, she is the appropriate respondent in this action. *See Rule 2 of the Rules Governing Section 2254 Cases in the United States District Courts; Rumsfeld v. Padilla*, 542 U.S. 426, 434-35 (2004)(the proper respondent for a habeas petition is the petitioner’s immediate custodian). Federal Rule of Civil Procedure 25(d) permits substitution of parties for public officers named as parties in an action. Accordingly, the undersigned **ORDERS** that the Shelby Searls be substitution as the named Respondent.

within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

28 U.S.C. § 2241(d). Petitioner is in custody at Huttonsville Correctional Center in Randolph County, West Virginia, which is located within the Northern District of West Virginia. Petitioner was convicted and sentenced by the Circuit Court of Monongalia County, which is also located within the Northern District of West Virginia. Therefore, the Southern District of West Virginia is not the proper venue for Petitioner's *habeas* petition.

When a case is filed in the improper venue, district courts should either dismiss the case, or "if it be in the interest of justice, transfer [the] case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a). The choice to dismiss or transfer the case lies within the sound discretion of the district court. The undersigned finds that the interest of justice is best served by transferring the case to the proper district court, the Northern District of West Virginia, Clarksburg Division. In furtherance of justice, and pursuant to 28 U.S.C. § 1406(a), this matter is hereby **TRANSFERRED** to the United States District Court for the Northern District of West Virginia, Clarksburg Division, for further consideration. The Clerk is directed to transmit Petitioner's file to the Clerk of Courts at the United States District Court for the Northern District of West Virginia. Petitioner is hereby **NOTIFIED** that this matter will be assigned a new case number and will be assigned to a new judicial officer by the Clerk's Office for the United States District Court for the Northern District of West Virginia.

The Clerk is directed to mail a copy of this Order to Petitioner, who is acting *pro se*.

ENTER: October 28, 2021.



  
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Omar J. Aboulhosn  
United States Magistrate Judge